

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In re Applications of )  
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)  
BAKCOR BROADCASTING, INC., DEBTOR )  
c/o DENNIS ELAM, TRUSTEE )  
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)  
For Renewal of License of )  
Station KKIK(FM) )  
Lubbock, Texas )  
)  
)  
SOUTHWEST EDUCATIONAL MEDIA )  
FOUNDATION OF TEXAS, INC. )  
)  
)  
For Construction Permit for a New )  
FM Station on Channel 229C1 )  
Lubbock, Texas )  
)  
To: Honorable Walter C. Miller  
Administrative Law Judge

MM Docket No. 92-253

File No. BRH-900330VV

File No. BPED-900629MK

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

OPPOSITION TO PETITION FOR LEAVE TO AMEND

Bakcor Broadcasting, Inc., Debtor c/o Dennis Elam, Trustee ("Bakcor") hereby opposes the Petition for Leave to Amend filed by Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT") on November 11, 1992, seeking to substitute a new entity instead of SEMFOT as the applicant and removing T. Kent Atkins as one of the principals of the applicant. The Petition for Leave to Amend should be summarily denied because SEMFOT has not met any of the good cause requirements as set forth in Erwin O'Conner Broadcasting Co., 18 RR2d 820 (1970). Furthermore, the

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amendment constitutes a blatant attempt to remove from this proceeding parties whose character is currently under review by the Commission's staff.

1. SEMFOT filed its application on June 29, 1990 -- more than two years ago. In that application T. Kent Atkins is named as the President and Director of SEMFOT. He prepared and signed the engineering and also signed the certification to the application. He has actively participated in the bankruptcy proceeding involving Bakcor and in discussions concerning his potential acquisition of KKIK(FM). Now, two years later, SEMFOT is seeking permission to replace Mr. Atkins, the person who has been the moving force behind the application, with Don A. Workman and to substitute a new entity, Lubbock Educational Broadcasting, Inc., as the applicant.<sup>1/</sup> In its brief one and a half page petition, SEMFOT merely states that the substitution has already occurred and, consistent with Section 1.65 of the Commission's Rules, SEMFOT is reporting the change. SEMFOT's petition is devoid of any substantive explanation why these changes have occurred and contains a woefully inadequate good cause showing.

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<sup>1/</sup> Mr. Workman attempted to acquire Station KKIK(FM) and its sister station, KXTQ(AM), from Bakcor earlier this year. Pursuant to the Court's instructions, Mr. Elam, as Trustee, was required to entertain offers through a sealed bidding process. Mr. Workman participated and submitted a bid. However, two other parties submitted higher bids.

2. SEMFOT's petition should be denied because it fails to meet the test for good cause set forth in Erwin O'Conner Broadcasting Co., supra. In order to establish good cause for acceptance of a post-designation amendment, an applicant must demonstrate that: (1) it acted with due diligence in filing the amendment; (2) the proposed amendment was not required by the voluntary act of the applicant; (3) no modification or addition of issues or parties will be required by acceptance of the amendment; (4) the proceeding will not be disrupted; (5) the other parties will not be unfairly prejudiced; and (6) the applicant will not gain a comparative advantage. Id., at 824.

3. SEMFOT has failed to meet even one of the six criteria. SEMFOT claims that it meets the first criterion because it filed the amendment within 30 days of the date that the changes occurred. However, SEMFOT fails to address the critical issues of what precipitated the changes and why they are occurring at such a late date in the Commission's consideration of the SEMFOT application. Only by addressing those issues could SEMFOT have shown that it acted with due diligence. As the record stands, it has most assuredly not done so. SEMFOT also has not met the second criterion, because it makes no claim that the changes were precipitated by events beyond its control. Clearly, SEMFOT engaged in an entirely voluntary act.

4. The acceptance of the amendment would require that Lubbock Educational Broadcasting, Inc., and Don Workman, be added as new parties to this proceeding. Moreover, the changes that SEMFOT has already effectuated and for which it now seeks post-hoc approval will unfairly prejudice Bakcor and disrupt the proceeding. Until the Presiding Judge rules on the petition, Bakcor is in a position of not knowing which entity is the real applicant and which persons are the real principals. At least during this interim period, Bakcor must pursue discovery against both entities and all four principals in order to protect its interests, thus adding to its burden as a party to this comparative renewal proceeding.

5. Finally, although SEMFOT claims that it will neither seek nor claim a comparative advantage from this amendment, SEMFOT does not specifically state that it will refrain from objecting to Bakcor's efforts to demonstrate that prior activities of T. Kent Atkins and SEMFOT bear on the comparative aspect of this proceeding, since, even independent of an integration claim, past actions are the best indicator of future performance. SEMFOT's intent in filing the amendment would appear to be to avoid scrutiny of SEMFOT and Mr. Atkins in this proceeding, given the fact that the Mass Media Bureau recited in the Hearing Designation Order that the disposition of the SEMFOT application in this proceeding would be subject to whatever action the Commission might take with respect to other

applications and stations in which SEMFOT and/or Mr. Atkins have an interest. Acceptance of SEMFOT's amendment would alter the comparative analysis in this proceeding, thereby running afoul of the Erwin O'Conner test.

6. SEMFOT cannot be permitted to amend out of its problems. The case law is clear that, even if the amendment is accepted for Section 1.65 purposes, the new entity, Lubbock Educational Broadcasting, Inc., cannot escape inquiry into SEMFOT's or Mr. Atkin's character and will be charged with any adverse findings by the Commission concerning SEMFOT or Mr. Atkins. In TV 9, Inc., 495 F.2d 929 (D.C. Cir. 1973), the Court of Appeals concluded that the Commission had improperly refused to consider the effect on an applicant of a federal criminal indictment against a 1.54% shareholder, officer and director because the individual had resigned as an officer and director after the indictment was handed down and had agreed to sell his shares of stock. Although the Court agreed that it was proper for the Commission to accept the amendment to reflect the current structure of the applicant, the removal did not moot the relevance of the indictment to the applicant.

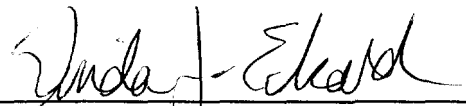
7. The Court's decision is directly on point here where SEMFOT is trying to remove from the applicant a person who has been at all relevant times President, one of three directors, and the moving force behind the application. Even if it is

appropriate to accept the amendment for Section 1.65 purposes, the amendment should not be accepted for any other purpose. And, in either case, SEMFOT should be instructed that SEMFOT and Mr. Atkins must be made available for discovery in this proceeding.

WHEREFORE, for the foregoing reasons, Bakcor requests that the petition for leave to amend be denied or, alternatively, that the acceptance of the petition be limited to satisfying the requirements of Section 1.65.

Respectfully submitted,

BAKCOR BROADCASTING, INC., DEBTOR  
C/O DENNIS ELAM, TRUSTEE

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Its Counsel

November 20, 1992

CERTIFICATE OF SERVICE

I, Patricia A. Druliner, hereby certify that I have sent a copy of the foregoing OPPOSITION TO PETITION FOR LEAVE TO AMEND by first class U.S. mail, postage prepaid, on this 20th day of November 1992, to the following:

\*Honorable Walter C. Miller  
Administrative Law Judge  
Federal Communications Commission  
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\*Hand Delivered